IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7462 OF 2006

WITH

CIVIL APPLICATION NO. 2750 OF 2006

Pramilabai Parshuram Punyarthi .. Petitioner.

vs.

Ramchandra Moreshwar

Joglekar/Dixit & Anr. . .. Respondents.

Mr. R.S. Datar i/by M/s. R & D Legal

for petitioner.

CORAM : A.P. DESHPANDE, J.

DATE : 7th December, 2006.

P.C.

. The petitioner is original defendant against whom the respondent instituted a suit for injunction simplicitor. The plaintiff/respondent had moved a temporary injunction application by making an averment that the defendant is trying to effect construction on the suit land and he should be restrained. The temporary injunction application came to be rejected. Thereafter the respondent filed an application under Order 23 seeking leave of the Court to withdraw the suit and file a fresh one on the same cause of action. The granting of the said application and the leave prayed for, has given rise to the filing of this petition.

2. The trial court has noticed that the present petitioner/defendant has purchased the land from the brother of the plaintiff and the plaintiff was claiming to be a joint owner and in joint possession of the land in question. However, he failed to establish his possession. Having realised that in view of rejection of the temporary injunction application, the plaintiff will have to make a prayer for possession obviously based on title, he moved an application before the trial Court. It has been the case of the defendant that the trial court has no pecuniary jurisdiction as the plaintiff ought to have valued the claim for the purpose of jurisdiction and court fee at Rs. 2,50,000/- having regard to the fact that total value of the land was Rs. 5 lacs. As the trial court found that even if the plaintiff moves an application seeking amendment, then the jurisdiction of the court would stand ousted and the plaint will have to be returned for presentation to the appropriate court. Taking an overall view of the matter and being convinced that plaintiff is entitled to seek leave to institute separate suit on the same cause of action, permission has been granted.

3. Perused the impugned order. The impugned order does not suffer from any patent illegality warranting interference at the hands of this Court in the exercise of 227 jurisdiction. Hence, the

writ petition is summarily rejected.

4. In view of the rejection of the writ petition, the civil application does not survive and the same stand dismissed.

(A.P. Deshpande, J.)